

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MILTON RICKMAN,

Plaintiff,

v.

Case No. 11-13079

MICHELINE TANTCHOU, M.D.,
SCOTT FRIESORGER, and
JEFF SHAW,

HON. AVERN COHN

Defendants.

/

MEMORANDUM AND ORDER
ADOPTING REPORT AND RECOMMENDATION (Doc. 30)
AND
SUA SPONTE DISMISSING MICHELINE TANTCHOU
AND
DISMISSING CASE

I.

This is a prisoner civil rights case under 42 U.S.C. § 1983. Plaintiff, proceeding pro se, claims that defendants have violated his constitutional rights under the First, Eighth, and Fourteenth Amendments. Plaintiff's claims stem from having his medical detail for a double mattress removed. Plaintiff has sued Micheline Tantchou (Tantchou), a physician, alleging she improperly removed the medical detail. Plaintiff also sued Scott Friesorger (Friesorger) and Jeff Shaw (Shaw), employees of the Michigan Department of Correction (MDOC), alleging they conspired to have his double mattress taken away in retaliation for an earlier grievance plaintiff filed against Shaw.

II.

The matter was referred to a magistrate judge for all pretrial proceedings, before whom Friesorger and Shaw filed a summary judgment motions on the grounds that plaintiff had failed to exhaust his administrative remedies as to them. (Doc. 11).

The magistrate judge issued a report and recommendation (MJRR) recommending that Friesorger and Shaw's motion be granted. (Doc. 28). Plaintiff filed objections. (Doc. 31). The Court agreed with the magistrate judge that plaintiff had not exhausted his administrative remedies against Friesorger or Shaw. As such, the Court adopted the MJRR, granted defendants' motion, and dismissed plaintiff's claims against Friesorger and Shaw without prejudice. (Doc. 33).

Regarding Tantchou, she has not been served despite several attempts. On March 23, 2012, the magistrate judge issued a MJRR, recommending that Tantchou be sua sponte dismissed without prejudice for failure to effect timely service. (Doc. 30). To date, plaintiff has not objected to the recommendation and the time for objections has passed.

III.

The failure to file objections to the report and recommendation waives any further right to appeal. Smith v. Detroit Federation of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir.1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motions. Thomas v. Arn, 474 U.S. 140, 149 (1985). However, the Court has reviewed the MJRR and agrees with the magistrate judge. As explained in the MJRR, much effort has been expended to locate and serve Tantchou. It is plaintiff's responsibility to provide an address for

service. At this point, dismissal of Tantchou is appropriate.

Accordingly, the findings and conclusions of the magistrate judge are ADOPTED as the findings and conclusions of the Court. Tantchou is sua sponte DISMISSED WITHOUT PREJUDICE. Because Tantchou was the only remaining defendant, this case is DISMISSED.

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: May 16, 2012

I hereby certify that a copy of the foregoing document was mailed to Milton Rickman, 252749, Chippewa Correctional Facility, 4269 W. M-80, Kincheloe, MI 49784 and the attorneys of record on this date, May 16, 2012, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160